IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 89/2000

1.Smt. Muctabai Datta Naik,
widow, major of age,

2. Kum Prassanna Datta Naik,
major of age, unmarried,

3. Kum. Darpana Datta Naik,
major of age, unmarried, student,

4. Kum Dipali Datta Naik,
majkor of age, unmarried, student,

5. Kum Sunita Datta Naik,
major of age, unmarried, student,

6. Shri Sudin Datta Naik,
major of age, bachelor, student,

7. Shri Deepak Datta Naik,
major of age, bachelor, student,

8. Shri Nilam Datta Naik,
major of age, bachelor, student,

All residing at Digas,
Panchawadi, Ponda Taluka. ..... Appellant.

Versus

1. Shri Roshant Prabhakar
Malwankar alias Babush, major,
driver and owner, residing near
Ravalnath Temple,
Anandwadi, Sanguem, Goa.

2. The New India Assurance Co. Ltd.,
Jagannath Bldg. Jose Inacio de
Loyala Rd., Near Railway Gate,
Margao, Goa. ..... Respondents.

Mr. P. Rao, Advocate for the appellants.

Respondent No.1 served, absent.

Mr. E. Afonso, Advocate for respondent No.2.

CORAM : A.P. LAVANDE, J.

DATE : 3rd March, 2005.

ORAL JUDGMENT :

By this appeal, the appellants challenge the Judgment and Award dated 30th March, 1999, passed by the Motor Accident Claims Tribunal, Margao, in Claim Petition No.34/1992, on the ground that the compensation awarded is inadequate. Appellant No.1 is the wife of late Datta Naik, who died in an accident which occurred on 21.11.1991 at Curchorem-Sanvordem bridge. Appellants No.2 to 8 are the children of late Datta Naik. After the accident, Datta Naik was admitted in Goa Medical College hospital at Bambolim and he expired in the hospital on 27.11.1991. The applicants filed claim petition No.34/92 in the Motor Accident Claims Tribunal, Margao, claiming total compensation of Rs.5,00,000/- against respondent No.1 who was the driver/owner of the vehicle involved in the accident and against respondent No.2, insurance company which had insured the vehicle. In the claim petition, the claimants examined four witnesses. The respondents did not examine any witness. After considering the evidence led by the

claimants, the Claims Tribunal held that it was proved that respondent No.1 drove the vehicle in a rash and negligent manner. However, the claimant were awarded a total compensation of Rs.96,000/- . In the present appeal, the appellants claim Rs.5,00,000/- by way of compensation. The only point which arises for consideration in this appeal is whether the appellants are entitled to compensation of Rs.5,00,000/- and, if not, what is the just compensation the appellants are entitled to.

2. Mr. Rao, the learned Counsel appearing for the appellants has submitted that the compensation awarded by the Claims Tribunal is inadequate; the Claims Tribunal has not awarded any amount for pain and suffering of the deceased Datta who was in Goa Medical College for six days before his death on 27.11.1991. The learned Counsel further submitted that the Claims Tribunal ought to have awarded the sum of Rs.15,000/- towards loss of consortium and Rs.5,000/- towards the funeral expenses. It has also been submitted that the appellants are also entitled to an amount of Rs.15,000/- towards loss of estate and reasonable amount for the expenses incurred towards medicines and expenses incurred by the applicants towards transport charges on account of the visits to the hospital on those six days, during which period he was in the hospital.

3. Mr. Afonso, learned Advocate appearing for respondent No.2 has submitted that no fault could be found with the Award given by the Claims Tribunal and the Claims Tribunal has correctly arrived at the compensation while passing the impugned award. The Claims Tribunal has awarded compensation of Rs.96,000/- in favour of the appellants under different heads which are as under :

a) Loss of dependency	Rs.84,000-00
b) Funeral expenses	Rs. 2,000-00
c) Loss of estate	Rs. 5,000-00
d) Loss of company	Rs. 5,000-00
Total	Rs.96,000-00

4. In so far as the compensation awarded for loss of dependency, I am of the opinion that the Claims Tribunal has correctly arrived at the said figure considering the monthly income of the deceased as Rs.2,000/- per month. In my opinion, no fault could be found with the figure arrived at, in so far as loss of dependency is concerned. In so far as loss of consortium is concerned, since there are eight claimants, I am of the opinion that the proper figure would be Rs.10,000/- and as such, the appellants are entitled to an additional amount of Rs.5,000/- than the one awarded by the Claims Tribunal. In so far as compensation towards the loss of estate is concerned, I am unable to agree with Mr. Rao that the appellants are entitled to the amount of Rs.15,000/- . In my

opinion, the amount of Rs.5,000/- awarded under this head is just and proper. In so far as compensation for pain and suffering is concerned, Mr. Rao relied upon the Division Bench Judgment of this Court in the case of ***Maharashtra State Road Trans. Corpn. v. Kamalabai and ors.*** (1989 ACJ 750). In the said Judgment, the Division Bench of this Court has held that the compensation can be awarded if the deceased was alive for some days before his death. I am, therefore, of the opinion that the appellants are also entitled to compensation under this head which I quantify at Rs.5,000/- . The deceased admittedly was in hospital for six days before his death and on account of this, some of the members of his family must have visited the hospital daily and must have incurred some expenses for travelling as well as must have incurred some other miscellaneous expenses. On this count, I am of the opinion that the appellants are entitled to additional compensation of Rs.3,000/- . Therefore, considering all the heads under which appellants are entitled to compensation, the total compensation works out to Rs.1,09,000/- . In my opinion, the appellants are, therefore, entitled to total compensation of Rs.1,09,000/- and to that extent, the award passed by the Claims Tribunal stands modified. Mr. Afonso, learned Counsel appearing for respondent No.2 has submitted that the Award passed by the learned Claims Tribunal has been already satisfied and this position is not disputed by the learned Counsel appearing for the appellants.

5. In view of the above, the appeal is partly allowed to the extent indicated above. Mr. Afonso, learned Counsel for respondent No.2 has submitted that respondent No.2 shall deposit the excess compensation of Rs.13,000/- awarded by this Court in the Motor Accident Claims Tribunal within a period of four weeks from today. The statement made by the learned Counsel for respondent No.2 is accepted. In view of the statement made by the learned Counsel for the respondents, I am not inclined to award interest on the excess amount of Rs.13,000/- . After the amount is deposited by respondent No.2, as agreed upon, the Claims Tribunal is free to pass appropriate orders for disbursement of the said amount. The appeal stands disposed of in the aforesaid terms. Parties to bear their own costs.

A. P. LAVANDE, J.

ssm.